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OFFICE OF PETITIONS

In re Application of :
Dugan et al. :
Application No. 10/817,295 :
Filed: April 5, 2004 :
Attorney Docket No. COS9806C2 :

ON PETITION

This is a decision in response to the paper labeled "Miscellaneous Communication" filed July 6, 2004, which states the Notice of Missing Parts was incorrect in so far as the application was complete as filed.

The petition is **dismissed**.

A decision according status under 37 CFR 1.47(a) was mailed for application no. 09/420,666. The instant application is a continuation of application no. 10/040,320, which is a continuation of application no. 09/420,666.

Upon filing the instant application, petitioner had the option of filing a copy of the declaration from application no. 09/420,666 along with a copy of the decision according status under 37 CFR 1.47(a) from application no. 09/420,666.

37 CFR 1.63(d)(3) states,

Where the executed oath or declaration of which a copy is submitted for a continuation or divisional application was originally filed in a prior application accorded status under § 1.47, the copy of the executed oath or declaration for such prior application must be accompanied by:

- (i) A copy of the decision granting a petition to accord § 1.47 status to the prior application

Upon filing the instant application, petitioner filed a copy of the declaration from application no. 09/420,666 but did not file a copy of the decision from application no. 09/420,666 or file a new petition under 37 CFR 1.47.

Petitioner argues that the application was complete on the filing date. However, the filing of the declaration not signed by all the inventors, without the submission of a copy of the prior decision, was not a proper submission of a declaration in compliance with 37 CFR 1.63.

The June 24, 2004, Notice to File Missing Parts has not been shown to be defective, and therefore will not be vacated.

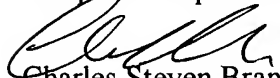
For the reasons above, the submission of \$130 for the late filing of an oath/declaration is in fact necessary. A review of the file history indicates the fee was charged to petitioner's deposit account on July 9, 2004. A refund of the fee will not be issued.

The declaration *along with* the papers filed on July 6, 2004, constitute a proper reply to the Notice and the file is now in compliance with 37 CFR 1.63(d) and MPEP 201.06(c).

For the foregoing reasons, the papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

The application has been forwarded to Technology Center Art Unit 2153 and will be reviewed by the examiner in due course.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.


Charles Steven Brantley
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Office of Petitions